

104TH CONGRESS
1ST SESSION

H. R. 2390

To revise the restrictions under the medicare program against payment for services furnished by a facility in which the referring physician has an ownership interest, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1995

Mr. THOMAS (for himself, Mr. BILIRAKIS, and Mr. BARTON of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To revise the restrictions under the medicare program against payment for services furnished by a facility in which the referring physician has an ownership interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES IN ACT.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Physician Ownership Referral Reform Act of
6 1995”.

1 (b) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-
 2 cept as otherwise specifically provided, whenever in this
 3 Act an amendment is expressed in terms of an amendment
 4 to or repeal of a section or other provision, the reference
 5 shall be considered to be made to that section or other
 6 provision of the Social Security Act.

7 **SEC. 2. REPEAL OF PROHIBITIONS BASED ON COMPENSA-**
 8 **TION ARRANGEMENTS.**

9 (a) IN GENERAL.—Section 1877(a)(2) (42 U.S.C.
 10 1395nn(a)(2)) is amended by striking “is—” and all that
 11 follows through “equity,” and inserting the following: “is
 12 (except as provided in subsection (c)) an ownership or in-
 13 vestment interest in the entity through equity,”.

14 (b) CONFORMING AMENDMENTS.—Section 1877 (42
 15 U.S.C. 1395nn) is amended as follows:

16 (1) In subsection (b)—

17 (A) in the heading, by striking “TO BOTH
 18 OWNERSHIP AND COMPENSATION ARRANGE-
 19 MENT PROVISIONS” and inserting “WHERE FI-
 20 NANCIAL RELATIONSHIP EXISTS”; and

21 (B) by redesignating paragraph (4) as
 22 paragraph (7).

23 (2) In subsection (c)—

24 (A) by amending the heading to read as
 25 follows: “EXCEPTION FOR OWNERSHIP OR IN-

1 VESTMENT INTEREST IN PUBLICLY TRADED
2 SECURITIES AND MUTUAL FUNDS”; and

3 (B) in the matter preceding paragraph (1),
4 by striking “subsection (a)(2)(A)” and inserting
5 “subsection (a)(2)”.

6 (3) In subsection (d)—

7 (A) by striking the matter preceding para-
8 graph (1);

9 (B) in paragraph (3), by striking “para-
10 graph (1)” and inserting “paragraph (4)”; and

11 (C) by redesignating paragraphs (1), (2),
12 and (3) as paragraphs (4), (5), and (6), and by
13 transferring and inserting such paragraphs
14 after paragraph (3) of subsection (b).

15 (4) By striking subsection (e).

16 (5) In subsection (f)(2), as amended by section
17 152(a) of the Social Security Act Amendments of
18 1994—

19 (A) in the matter preceding paragraph (1),
20 by striking “ownership, investment, and com-
21 pensation” and inserting “ownership and in-
22 vestment”;

23 (B) in paragraph (2), by striking “sub-
24 section (a)(2)(A)” and all that follows through

1 “subsection (a)(2)(B)),” and inserting “sub-
 2 section (a)(2),”; and

3 (C) in paragraph (2), by striking “or who
 4 have such a compensation relationship with the
 5 entity”.

6 (6) In subsection (h)—

7 (A) by striking paragraphs (1), (2), and
 8 (3);

9 (B) in paragraph (4)(A), by striking clause
 10 (iv); and

11 (C) in paragraph (4)(B), by striking
 12 “RULES.—” and all that follows through “(ii)
 13 FACULTY” and inserting “RULES FOR FAC-
 14 ULTY.

15 **SEC. 3. REVISION OF DESIGNATED HEALTH SERVICES SUB-**
 16 **JECT TO PROHIBITION.**

17 (a) IN GENERAL.—Section 1877(h)(6) (42 U.S.C.
 18 1395nn(h)(6)) is amended by striking subparagraphs (B)
 19 through (K) and inserting the following:

20 “(B) Items and services furnished by a
 21 community pharmacy (as defined in paragraph
 22 (1)).

23 “(C) Magnetic resonance imaging and
 24 computerized tomography services.

1 “(D) Outpatient physical therapy serv-
2 ices.”.

3 (b) COMMUNITY PHARMACY DEFINED.—Section
4 1877(h) (42 U.S.C. 1395nn(h)), as amended by section
5 2(b)(6), is amended by inserting before paragraph (4) the
6 following new paragraph:

7 “(1) COMMUNITY PHARMACY.—The term ‘com-
8 munity pharmacy’ means any entity licensed or cer-
9 tified to dispense outpatient prescription drugs by
10 the State in which the entity is located (including an
11 entity which dispenses such drugs by mail order),
12 but does not include such an entity which is owned
13 and operated by—

14 “(A) a hospital;

15 “(B) an ambulatory surgical center de-
16 scribed in section 1832(a)(2)(F)(i); or

17 “(C) a prepaid plan described in subsection
18 (b)(3).”.

19 (c) CONFORMING AMENDMENTS.—Section
20 1877(b)(2) (42 U.S.C. 1395nn(b)(2)) is amended in the
21 matter preceding subparagraph (A) by striking “services”
22 and all that follows through “supplies)—” and inserting
23 “services—”.

1 **SEC. 4. DELAY IN IMPLEMENTATION UNTIL PROMULGA-**
 2 **TION OF REGULATIONS.**

3 (a) IN GENERAL.—Section 13562(b) of OBRA–1993
 4 (42 U.S.C. 1395nn note) is amended—

5 (1) in paragraph (1), by striking “paragraph
 6 (2)” and inserting “paragraphs (2) and (3)”; and

7 (2) by adding at the end the following new
 8 paragraph:

9 “(3) PROMULGATION OF REGULATIONS.—Not-
 10 withstanding paragraphs (1) and (2), the amend-
 11 ments made by this section shall not apply to any
 12 referrals made before the effective date of final regu-
 13 lations promulgated by the Secretary of Health and
 14 Human Services to carry out such amendments.”.

15 (b) EFFECTIVE DATE.—The amendments made by
 16 subsection (a) shall take effect as if included in the enact-
 17 ment of OBRA–1993.

18 **SEC. 5. EXCEPTIONS TO PROHIBITION.**

19 (a) REVISIONS TO EXCEPTION FOR IN-OFFICE AN-
 20 CILLARY SERVICES.—

21 (1) REPEAL OF SITE-OF-SERVICE REQUIRE-
 22 MENT.—Section 1877(b)(2)(A) (42 U.S.C.
 23 1395nn(b)(2)(A)) is amended to read as follows:

24 “(A) that are furnished personally by the
 25 referring physician, personally by a physician
 26 who is a member of the same group practice as

1 the referring physician, or personally by individ-
 2 uals who are under the general supervision of
 3 the physician or of another physician in the
 4 group practice, and”.

5 (2) CLARIFICATION OF TREATMENT OF PHYSI-
 6 CIAN OWNERS OF GROUP PRACTICE.—Section
 7 1877(b)(2)(B) (42 U.S.C. 1395nn(b)(2)(B)) is
 8 amended by striking “physician or group practice”
 9 and inserting “physician, such group practice, or the
 10 physician owners of such group practice”.

11 (3) CONFORMING AMENDMENT.—Section
 12 1877(b)(2) (42 U.S.C. 1395nn(b)(2)) is amended by
 13 amending the heading to read as follows: “ANCIL-
 14 LARY SERVICES FURNISHED PERSONALLY OR
 15 THROUGH GROUP PRACTICE.—”.

16 (b) CLARIFICATION OF EXCEPTION FOR SERVICES
 17 FURNISHED IN A RURAL AREA.—Paragraph (5) of section
 18 1877(b) (42 U.S.C. 1395nn(b)), as transferred by section
 19 2(b)(3)(C), is amended by striking “substantially all” and
 20 inserting “not less than 75 percent”.

21 (c) REVISION OF EXCEPTION FOR PREPAID
 22 PLANS.—

23 (1) EXPANSION OF EXCEPTION FOR CERTAIN
 24 MANAGED CARE ARRANGEMENTS.—Section
 25 1877(b)(3) (42 U.S.C. 1395nn(b)(3)) is amended—

1 (A) in the matter preceding subparagraph
2 (A), by striking “organization—” and inserting
3 “organization, directly or through contractual
4 arrangements with other entities, to individuals
5 enrolled with the organization—”;

6 (B) by striking “or” at the end of subpara-
7 graph (C);

8 (C) by striking the period at the end of
9 subparagraph (D) and inserting a comma; and

10 (D) by adding at the end the following new
11 subparagraphs:

12 “(E) with a contract with a State to pro-
13 vide services under the State plan under title
14 XIX (in accordance with section 1903(m)); or

15 “(F) which meets State regulatory require-
16 ments applicable to health maintenance organi-
17 zations and which—

18 “(i) provides designated health serv-
19 ices directly or through contractual ar-
20 rangements with providers;

21 “(ii) assumes financial risk for the
22 provision of services or provides services on
23 behalf of another individual or entity (in-
24 cluding but not limited to a self-insured
25 employer, indemnity plan, physician, or

physician group) that assumes financial risk for the provision of the item or service; and

“(iii) subjects the services to a program of utilization review offered by an organization described in a preceding subparagraph, an organization meeting State regulatory requirements applicable to utilization review, or an organization accredited to perform utilization review considered appropriate by the Secretary.”.

(2) NEW EXCEPTION FOR OTHER CAPITATED PAYMENTS.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 2(b)(3)(C), is amended—

(A) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8); and

(B) by inserting after paragraph (3) the following new paragraph:

“(4) OTHER CAPITATED PAYMENTS.—In the case of a designated health service which is included in the services for which a physician or physician group (including a preferred provider organization) is paid only on a capitated basis by a health plan or insurer pursuant to a written arrangement between

1 the plan or insurer and the physician or physician
 2 group in which the physician or physician group as-
 3 sumes financial risk for the furnishing of the serv-
 4 ice.”.

5 (d) NEW EXCEPTION FOR SHARED FACILITY SERV-
 6 ICES.—

7 (1) IN GENERAL.—Section 1877(b) (42 U.S.C.
 8 1395nn(b)), as amended by section 2(b)(3)(C) and
 9 by subsection (c)(2), is amended—

10 (A) by redesignating paragraphs (5)
 11 through (8) as paragraphs (6) through (9); and

12 (B) by inserting after paragraph (4) the
 13 following new paragraph:

14 “(5) SHARED FACILITY SERVICES.—In the case
 15 of a designated health service consisting of a shared
 16 facility service of a shared facility—

17 “(A) that is furnished—

18 “(i) personally by the referring physi-
 19 cian who is a shared facility physician or
 20 personally by an individual directly em-
 21 ployed or under the general supervision of
 22 such a physician,

23 “(ii) by a shared facility in a building
 24 in which the referring physician furnishes
 25 substantially all of the services of the phy-

1 sician that are unrelated to the furnishing
2 of shared facility services, and

3 “(iii) to a patient of a shared facility
4 physician; and

5 “(B) that is billed by the referring physi-
6 cian or a group practice of which the physician
7 is a member.”.

8 (2) DEFINITIONS.—Section 1877(h) (42 U.S.C.
9 1395nn(h)), as amended by section 2(b)(6) and sec-
10 tion 3(b), is amended by inserting after paragraph
11 (1) the following new paragraph:

12 “(2) SHARED FACILITY RELATED DEFINI-
13 TIONS.—

14 “(A) SHARED FACILITY SERVICE.—The
15 term ‘shared facility service’ means, with re-
16 spect to a shared facility, a designated health
17 service furnished by the facility to patients of
18 shared facility physicians.

19 “(B) SHARED FACILITY.—The term
20 ‘shared facility’ means an entity that furnishes
21 shared facility services under a shared facility
22 arrangement.

23 “(C) SHARED FACILITY PHYSICIAN.—The
24 term ‘shared facility physician’ means, with re-
25 spect to a shared facility, a physician (or a

1 group practice of which the physician is a mem-
 2 ber) who has a financial relationship under a
 3 shared facility arrangement with the facility.

4 “(D) SHARED FACILITY ARRANGEMENT.—
 5 The term ‘shared facility arrangement’ means,
 6 with respect to the provision of shared facility
 7 services in a building, a financial arrange-
 8 ment—

9 “(i) which is only between physicians
 10 who are providing services (unrelated to
 11 shared facility services) in the same build-
 12 ing,

13 “(ii) in which the overhead expenses
 14 of the facility are shared, in accordance
 15 with methods previously determined by the
 16 physicians in the arrangement, among the
 17 physicians in the arrangement, and

18 “(iii) which, in the case of a corpora-
 19 tion, is wholly owned and controlled by
 20 shared facility physicians.”.

21 (e) NEW EXCEPTION FOR SERVICES FURNISHED IN
 22 COMMUNITIES WITH NO ALTERNATIVE PROVIDERS.—
 23 Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by
 24 section 2(b)(3)(C), subsection (c)(2), and subsection
 25 (d)(1), is amended—

1 (1) by redesignating paragraphs (6) through
 2 (9) as paragraphs (7) through (10); and

3 (2) by inserting after paragraph (5) the follow-
 4 ing new paragraph:

5 “(6) NO ALTERNATIVE PROVIDERS IN AREA.—

6 In the case of a designated health service furnished
 7 in any area with respect to which the Secretary de-
 8 termines that individuals residing in the area do not
 9 have reasonable access to such a designated health
 10 service for which subsection (a)(1) does not apply.”.

11 (f) NEW EXCEPTION FOR SERVICES FURNISHED IN
 12 AMBULATORY SURGICAL CENTERS.—Section 1877(b) (42
 13 U.S.C. 1395nn(b)), as amended by section 2(b)(3)(C),
 14 subsection (c)(2), subsection (d)(1), and subsection (e)(1),
 15 is amended—

16 (1) by redesignating paragraphs (7) through
 17 (10) as paragraphs (8) through (11); and

18 (2) by inserting after paragraph (6) the follow-
 19 ing new paragraph:

20 “(7) SERVICES FURNISHED IN AMBULATORY

21 SURGICAL CENTERS.—In the case of a designated
 22 health service furnished in an ambulatory surgical
 23 center described in section 1832(a)(2)(F)(i).”.

24 (g) NEW EXCEPTION FOR SERVICES FURNISHED IN
 25 RENAL DIALYSIS FACILITIES.—Section 1877(b) (42

1 U.S.C. 1395nn(b)), as amended by section 2(b)(3)(C),
2 subsection (c)(2), subsection (d)(1), subsection (e)(1), and
3 subsection (f), is amended—

4 (1) by redesignating paragraphs (8) through
5 (11) as paragraphs (9) through (12); and

6 (2) by inserting after paragraph (7) the follow-
7 ing new paragraph:

8 “(8) SERVICES FURNISHED IN RENAL DIALYSIS
9 FACILITIES.—In the case of a designated health
10 service furnished in a renal dialysis facility under
11 section 1881.”.

12 (h) NEW EXCEPTION FOR SERVICES FURNISHED IN
13 A HOSPICE.—Section 1877(b) (42 U.S.C. 1395nn(b)), as
14 amended by section 2(b)(3)(C), subsection (c)(2), sub-
15 section (d)(1), subsection (e)(1), subsection (f), and sub-
16 section (g), is amended—

17 (1) by redesignating paragraphs (9) through
18 (12) as paragraphs (10) through (13); and

19 (2) by inserting after paragraph (8) the follow-
20 ing new paragraph:

21 “(9) SERVICES FURNISHED BY A HOSPICE PRO-
22 GRAM.—In the case of a designated health service
23 furnished by a hospice program under section
24 1861(dd)(2).”.

1 (i) NEW EXCEPTION FOR SERVICES FURNISHED IN
 2 A COMPREHENSIVE OUTPATIENT REHABILITATION FA-
 3 CILITY.—Section 1877(b) (42 U.S.C. 1395nn(b)), as
 4 amended by section 2(b)(3)(C), subsection (c)(2), sub-
 5 section (d)(1), subsection (e)(1), subsection (f), subsection
 6 (g), and subsection (h), is amended—

7 (1) by redesignating paragraphs (10) through
 8 (13) as paragraphs (11) through (14); and

9 (2) by inserting after paragraph (9) the follow-
 10 ing new paragraph:

11 “(10) SERVICES FURNISHED IN A COMPREHEN-
 12 SIVE OUTPATIENT REHABILITATION FACILITY.—In
 13 the case of a designated health service furnished in
 14 a comprehensive outpatient rehabilitation facility
 15 under section 1861(cc)(2).”.

16 **SEC. 6. REPEAL OF REPORTING REQUIREMENTS.**

17 Section 1877 (42 U.S.C. 1395nn) is amended—

18 (1) by striking subsection (f); and

19 (2) by striking subsection (g)(5).

20 **SEC. 7. PREEMPTION OF STATE LAW.**

21 Section 1877 (42 U.S.C. 1395nn) is amended by add-
 22 ing at the end the following new subsection:

23 “(i) PREEMPTION OF STATE LAW.—This section pre-
 24 empts State law to the extent State law is inconsistent
 25 with this section.”.

1 **SEC. 8. EFFECTIVE DATE.**

2 Except as provided in section 4(b), the amendments
3 made by this Act shall apply to referrals made on or after
4 August 15, 1995, without regard to whether or not regula-
5 tions to carry out the amendments have been promulgated
6 by such date.

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